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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. ERIC SUGGS, Defendant and Appellant.	E064058 (Super.Ct.No. SWF1500568) OPINION

APPEAL from the Superior Court of Riverside County. John M. Davis, Judge. Affirmed with directions.

Rodger P. Curnow, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

After Jane Doe helped defendant Eric Suggs by taking him to pick up some cases of water, he grabbed her hair, threatening to kill her, and forced her at knife point into the

recreational vehicle in which he lived. There, he forced her to orally copulate him as he photographed her, and then raped her. After driving around the next day, purchasing a cheesecake and eating at a restaurant, Jane Doe grabbed the cell phone defendant had used to photograph the sex acts and took off. Jane Doe later reported the crimes and went to a hospital for a rape examination. Defendant was charged and convicted by jury of false imprisonment (Pen. Code, § 236)[1], forcible oral copulation (§ 288a, subd. (c)(2)(A)), forcible rape (§ 261, subd. (a)(2)), and criminal threats (§ 422), along with allegations relating to use of a knife and prior convictions. Defendant was sentenced to an aggregate term of 30 years to life, and appealed.

On appeal, defendant argues (1) there is insufficient evidence to support the convictions due to the inherent improbability of Jane Doe's testimony; (2) Jane Doe's text messages to Duane E. were inadmissible as "fresh complaint;" and (3) the trial court erroneously limited cross-examination of Jane Doe about her romantic interest in Duane E. to show bias or motive. We affirm.

BACKGROUND

Jane Doe had known defendant several years. They had a sexual relationship at some point, but the relationship ceased to be intimate when defendant got into trouble for stalking her. Defendant was convicted of stalking her in 2012 or 2013, during a time when Jane Doe wanted to end their relationship. Defendant threatened her by way of telephone and text messages, and also contacted her workplace. Defendant went to

[1] All further statutory references are to the Penal Code, unless otherwise indicated.

prison for the stalking offense. He corresponded with her while he was in prison, and contacted her when he was released.

On March 12, 2015, defendant was living in a recreational vehicle[2] in the Lake Elsinore area, where Jane Doe had visited several times. Prior to March 12, 2015, defendant sent text messages to Jane Doe asking her to come see him to return his food stamps and to take him to get bottled water and groceries. During that particular time period, there was no sexual relationship between Jane Doe and defendant. However, Jane Doe was in possession of defendant's EBT (Electronic Benefit Transfer [see <https://www.ebt.ca.gov/caebtclient/reciplogin_client.jsp> [as of Dec. 8, 2016]) card.

Jane Doe took defendant to the store, and then they went to eat at a restaurant; eventually, Jane Doe told him they had to leave. Defendant seemed a little upset because he was not finished talking to her, but Jane Doe said they could continue their conversation in the car. Then they drove to take the water and groceries to defendant's place. When they reached defendant's residence, they unloaded the groceries. Defendant grabbed Jane Doe by her ponytail and put a knife to her neck, pushing her up the steps and into the trailer. Defendant told her she was not going anywhere and that she better go inside or he would kill her, calling her a "bitch."

Inside the trailer, defendant closed the door, which had no working handle with which to open the door. Defendant yelled at her that he would kill her and ordered her to remove her clothing. He then told her to perform oral sex on him, although she did not

[2] The record is unclear regarding the nature of the residence, which was referred to variously as a trailer or a recreational vehicle.

want to do so. However, she complied because he had a knife and was angry. As she performed oral sex, defendant took photographs of her with his cell phone, so that she could not deny doing it.[3]

Next, defendant told her to go to the bed so he could take more photographs. After he took the photographs, he had sexual intercourse with her. Jane Doe did not want to have sex with him, but she was afraid. After the sex act was completed, defendant acted as if everything was all right. Jane Doe wanted to go to sleep, but at some point defendant put his mouth on her genitalia. During the night after the rape, Jane Doe received a telephone call from her work manager, Ivan Romero. She spoke to Ivan in Spanish, which defendant did not understand, but she did not disclose the sexual assaults or ask for assistance from Ivan.

The next morning, defendant offered Jane Doe breakfast, so she had tea and toast. After breakfast, defendant went into the bathroom, after which defendant and Jane Doe decided to run errands. First, they needed to fill a can with gas, so they left defendant's RV to get the gas can. Then defendant exited Jane Doe's car to open the gate as Jane Doe drove out; she then stopped the car and waited for defendant to close the gate and re-enter the vehicle.

At Lake Elsinore, defendant and Jane Doe picked some herbs, and gathered bottles and cans for recycling. Then they went to a gas station to fill the can, where Jane Doe exited the car to pay the cashier and defendant filled the can. After getting gas, Jane Doe

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[3] The photographs of Jane Doe orally copulating defendant were admitted into evidence.

wanted to go to buy a cheesecake. They went first to a cheesecake bakery, but did not buy a cheesecake there. They next went to the welfare office in Lake Elsinore, and then to Albertsons, where they did buy a cheesecake. Then they drove back to defendant's place where they fed some pigeons. She had not yet decided to report the sexual assaults to the police at that point.

After feeding the pigeons, they drove to Perris where Jane Doe dropped defendant off at a location on Eleventh and South Perris Boulevard. She picked him up later and drove to the Spectrum Shopping Center where there was a Wells Fargo Bank. After dropping off defendant at another store, Jane Doe went into the Wells Fargo Bank. Inside the Wells Fargo Bank, where Jane Doe did not have any accounts, she sat down with her cell phone in hand and thought about what she was going to do. Jane Doe still did not know what to do, because defendant had the photographs of her in his cell phone and had threatened to show them; however, she left Wells Fargo Bank and went to pick up the defendant where he said he would be.

After she picked up the defendant, they went to eat at a Mexican restaurant. At the restaurant, Jane Doe asked defendant to delete the photographs, but he refused. Jane Doe grabbed defendant's cellphone and ran to the parking area, with defendant briefly in pursuit. She drove around Perris, and as she did so, she received phone calls from defendant. Jane Doe wanted his passcode for the phone, and eventually defendant provided it. However, defendant told her it did not matter if the photographs were deleted because he had sent them to someone else.

After receiving the passcode, Jane Doe looked in the cell phone but the pictures taken by defendant from the previous night were not there. She texted her friend, Duane English, because she needed to know what to do. Duane advised her to go to the police. In the meantime, defendant telephoned Jane Doe multiple times from two different telephone numbers.

After Jane Doe reported to the police station, where a red mark was visualized on her neck, she went to the hospital for a sexual assault examination. The examination by the SART (Sexual Assault Response Team) nurse revealed that Jane Doe's head was tender from the hair pulling, petecchia was observed on the back of her throat, and there was a slight laceration to her vagina. On March 19, 2015, Jane Doe returned to the police station, and inquired if the police would be able to see something even if it had been deleted from her phone. She explained there were calls from relatives whom she did not wish to involve in the matter, but the call she had deleted was from Ivan.

Jane Doe did not report to work that day, or for the rest of the weekend. Nevertheless, defendant telephoned Domino's Pizza, where she worked, making threats to employees. A log of the calls revealed that the threatening phone calls were made from the same telephone numbers that had called Jane Doe. The Riverside County Sheriff's Department deputies were briefed on the sexual assaults at the beginning of their watch. They were alerted to the fact that defendant might be walking around the area of Domino's Pizza in Perris. Afterwards, a deputy on patrol saw a man who resembled a picture of defendant shown at the briefing in the area between the station and

Domino's Pizza. Defendant ran across the street after being spotted, but was arrested as he hid alongside a house.

Defendant was charged in an amended information with false imprisonment (§ 236, count 1), forcible oral copulation (§ 288a, subd. (c)(2)(A), count 2), forcible rape (§ 261, subd. (a)(2), count 3), and criminal threats (§ 422, count 4). It was further alleged that defendant used a weapon (knife), within the meaning of section 667.61, subdivision (e)(3) (counts 2 and 3 only), and that he had previously been convicted of two felonies for which he had served separate prison terms (prison priors). (§ 667.5, subd. (b).) Following a trial by jury, defendant was convicted of all counts. The jury also made true findings as to the knife use allegation within the meaning of section 667.61, subdivision (e)(3), as to counts 2 and 3.

A court trial was held as to the allegations relating to the prison priors, and the court found both allegations were true. At sentencing (held in conjunction with the court trial), the court denied probation. Defendant was sentenced to 15 years to life on count 2, with a consecutive term of 15 years to life on count 3. The court imposed terms of two years each for counts 1 and 4, but stayed them pursuant to section 654. The court also stayed the enhancements for the prison priors. Defendant appealed.

DISCUSSION

1. *There is Substantial Evidence to Support the Convictions.*

Defendant argues there is insufficient evidence to sustain the convictions due to the inherent improbability of Jane Doe's testimony. While Jane Doe missed several

opportunities to extricate herself from the situation created by defendant, her testimony was not inherently improbable.

In reviewing a challenge to the sufficiency of evidence, we do not determine the facts ourselves. (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129 [disapproved on a different point in *People v. Rundle* (2008) 43 Cal.4th 76, 151].) Instead, we examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Kraft* (2000) 23 Cal.4th 978, 1053, citing *People v. Johnson* (1980) 26 Cal.3d 557, 578.) In this regard, resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact, and unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction. (*People v. Brown* (2014) 59 Cal.4th 86, 106, citing *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

"Where, however, the evidence relied upon by the prosecution is so improbable as to be incredible, and amounts to no evidence, a question of law is presented which authorizes an appellate court to set aside a conviction." (*People v. Headlee* (1941) 18 Cal.2d 266, 267.) To be improbable on its face, the evidence must assert that something has occurred that does not seem possible could have occurred under the circumstances disclosed. (*Ibid.*)

To warrant rejection of the statements made by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their

falsity must be apparent without resorting to inferences or deductions. (*People v. Maciel* (2013) 57 Cal.4th 482, 519, quoting *Thornton* (1974) 11 Cal.3d 738, 754.) Thus, testimony that merely discloses unusual circumstances does not come within that category. (*People v. Mayberry* (1975) 15 Cal.3d 143, 150.)

We agree that Jane Doe passed up several opportunities to extricate herself from the situation, but those opportunities presented themselves *after* the commission of the various forcible sex acts and were motivated by her desire to recover the photographs taken of her by defendant. Further, there were objective medical findings corroborating her testimony, so her testimony was not, "on its face," inherently improbable or impossible. It was for the jury to decide whether Jane Doe's testimony was believable, and the jury appears to have analyzed it carefully, given the requests for read-back of her testimony.

2. *The Admission of Jane Doe's Text Messages to Duane English Was Harmless Error.*

In limine, the prosecution sought to admit—and defendant sought to exclude—evidence of text messages sent by Jane Doe to Duane English, followed by a telephone conversation wherein English advised her to go to the police. The court ruled that both the text messages and the phone call were admissible as fresh complaint. During trial, Jane Doe testified that she called her friend Duane English, and identified the printout of the text messages she had exchanged with him, extracted from her phone. That report, containing the text messages, was admitted into evidence. Regarding her phone call to

English, the prosecutor did not inquire as to the contents of the statements. On appeal, defendant argues it was error to admit the statements as fresh complaint. We disagree.

The California Supreme Court has reaffirmed the fresh-complaint doctrine, and has held that "under principles generally applicable to the determination of evidentiary relevance and admissibility, proof of an extrajudicial complaint, made by the victim of a sexual offense, disclosing the alleged assault, may be admissible for a limited, nonhearsay purpose–namely, to establish the fact of, and the circumstances surrounding, the victim's disclosure of the assault to others–whenever the fact that the disclosure was made and the circumstances under which it was made are relevant to the trier of fact's determination as to whether the offense occurred." (*People v. Brown* (1994) 8 Cal.4th 746, 749-750, italics omitted.) The jury may consider the evidence for the purpose of corroborating the victim's testimony, but not to prove the occurrence of the crime. (*People v. Manning* (2008) 165 Cal.App.4th 870, 880, citing *People v. Ramirez* (2006) 143 Cal.App.4th 1512, 1522.)

The nature of the crimes and the victim's identification of the assailant are properly included in the fresh complaint. (*People v. Burton* (1961) 55 Cal.2d 328, 351.) However, details cannot be recounted; the fresh complaint evidence is limited to the fact that a complaint was made, and to the circumstances surrounding the making of the complaint, in order to eliminate or, at least, minimize the risk that the jury will rely upon the evidence for an improper hearsay purpose. (*People v. Brown, supra,* 8 Cal.4th at p. 762; *People v. Burton, supra,* 55 Cal.2d at p. 351.)

Here, the court erroneously admitted the content of the text messages. The jury heard Jane Doe's testimony about making the disclosure to Duane English via text message, and this testimony was corroborated by the investigator who extracted the messages found in her phone records. Thus, the disclosure was established without having to resort to admitting the content of the messages themselves.

In any event, the error was harmless because defendant presented ample evidence showing that Jane Doe had a motive to fabricate the incident in order to reclaim the photographs on defendant's cell phone. Further, the jury was able to observe Jane Doe's demeanor as she testified. Any error in admitting the content of the text messages was harmless. (*People v. Watson* (1956) 46 Cal.2d. 818, 836.)

3. *The Ruling Precluding Defendant From Examining Jane Doe As To the Possible Existence of a Romantic Interest In Duane English Was Not Error.*

In limine, defendant sought to admit evidence that Jane Doe had a romantic interest in Duane English, and that in her desire to avoid damaging that relationship, she wanted to destroy the photographs taken of her by defendant. The trial court sustained the People's relevance objection to the admission of such evidence. On appeal, defendant argues that this ruling violated his constitutional rights to Due Process and Confrontation of Witnesses. We disagree.

Where motive or state of mind of a witness is the object of cross-examination, it has long been held that "questions which would have a tendency to show bias of a witness are not only competent, but great latitude on cross-examination should be allowed in developing its existence." (*People v. De Mello* (1938) 28 Cal.App.2d 281,

286, citing *People v. Pantages* (1931) 212 Cal. 237, 239.) "It is true, as defendant argues, that a witness may be required to answer any question which tends to test his credibility and that, as to such matters, liberal cross-examination is the rule." (*Mackoff v. Biltmore Garages, Inc.* (1963) 222 Cal.App.2d 846, 851; *Newman v. Los Angeles Transit Lines* (1953) 120 Cal.App.2d 685, 691.)

"But a trial court also has a wide discretion to keep the trial from disintegrating into a series of explorations of relatively collateral matters." (*Mackoff v. Biltmore Garages, Inc., supra,* 222 Cal.App.2d at p. 851.) Here, defendant's offer of proof of a "romantic relationship" was based on statements made in some text messages to Duane English, thanking him for his "loving care," telling him he was "special," and thanking him for "the love."

By themselves, these statements do not indicate the existence of a romantic relationship. Such statements, in context, demonstrate no more than appreciation for emotional support, given the context of the text messages that were admitted into evidence. Without additional evidence, the court properly excluded the evidence.

4. *The Court Should Have Stricken, Not Stayed, the Prison Prior Enhancements.*

At sentencing, the trial court exercised discretion to stay the terms for the prison prior enhancements, in the interests of justice. This was unauthorized. We requested supplemental briefing from the parties to address this issue.

Pursuant to section 667.5, subdivision (b), a trial court must impose an enhancement for a prior prison term. "'Unless a statute says otherwise, an enhancement

may be *imposed* or *stricken*, but . . . may not be *stayed*; to do so is an illegal sentence. [Citation]'" (*People v. Haykel* (2002) 96 Cal.App.4th 146, 151, quoting *People v. Harvey* (1991) 233 Cal.App.3d 1206, 1231.) If the reasons are not set forth in the minutes, the unauthorized order staying the enhancements may not be deemed a dismissal under section 1385, and the matter would have to be remanded to the trial court to conduct a limited resentencing. (See, *People v. Bradley* (1998) 64 Cal.App.4th 386, 391-392; see also, *People v. McCray* (2006) 144 Cal.App.4th 258, 267.)

Here, the trial court made it clear that it did not intend to impose the additional terms for the prison prior enhancements. We may therefore modify the judgment to strike the enhancements.

DISPOSITION

The judgment is affirmed and modified to strike the prison priors.

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RAMIREZ
P. J.

We concur:

MILLER
J.

CODRINGTON
J.